

EU AND BELARUS IN THE THIRD QUARTER OF 2008: ANALYSIS AND MONITORING¹

Overview

In spring 2008, at the peak of the controversy imposed parliamentary elections that took place on 30 September 2008 were set by the European Union (and, for this reason, the United States) as a benchmark for normalizing relations with the official Minsk and a pre-condition for a further dialogue. It is not surprising that the election is a dominant topic in the third issue of our Belarus-EU relations and dialogue monitoring.

The most predictable results of the parliamentary elections that took place in Belarus on 28 September 2008 were accepted as a great surprise and even a sensation in the West and partly even in Belarus. Indeed, with political prisoners being released, scores of OSCE observers entering the country, many after years of being on ban lists, emissaries of European and US governments having talks in the presidential administration, EU foreign policy supreme Javier Solana talking to Belarusian president on the phone just three days before the ballot, and president Lukashenka himself making hints that few opposition members might be elected, it did look like that this ballot would have been markedly different than the usual routine exercise of validating the status quo, which elections in Belarus had routinely been for the last twelve years. Yet, the conduct of critical stages of the election process and the results declared by the central election commission hours after the polls were closed made it clear that Belarus would receive the most sanitized parliament it ever had since the Soviet time, with no nominal opposition or even regime mavericks who would issue retail criticism of the government on occasional topics present in the chamber in the next four years. Nevertheless, it is this election and this result that paved way towards unprecedented engagement with Lukashenka, who, since 13 October 2008, is free to travel to the EU, after the European Council suspended visa bans against top Belarusian officials (except for those suspected in political kidnappings and the head of the Central Election Commission) for the next six months.

Overall, Lukashenka brilliantly solved seemingly impossible task: he achieved normalization of relations with the West and wriggled himself out of the visa sanctions without ceding any political ground at home. Some attribute this success to the genius of British PR manager lord Timothy Bell (whose previous clients included Margaret Thatcher and Boris Berezovsky), who was hired in May "to improve the international image of Belarus". Others attribute this refinement to the new generation of advisers who replaced in July the coterie of siloviki led by the former Security Council head Viktor Sheiman. Lead by new Lukashenka's chief of staff Uladzimir Makei, this group may not be nearly as liberal as some optimists predicted. But they surely know better how to seed good images, and illusions, among the Westerners.

The key to Lukashenka's success is a fundamental and sometimes forgotten difference in how the dialogue is understood in the West and by the autocratic government. In the first case, dialogue is an instrument of finding common ground and win-win solutions. In the second, it is a zero-sum game in which there can only be one winner. For Europeans, who offered Lukashenka an olive branch, dialogue is a proof of their good will. For Lukashenka, it is a sign of Europe's weakness, a proof that his own strategy of denying any international criticism worked, and an opportunity to win more – and, accordingly, have a counterpart lose even more. But some zero sum games, such as poker, require, that, if you want a counterpart lose big, you must give him a chance to win few rounds.

If anything, the pre-election dialogue with the West followed this canon of a poker game meticulously. The first act of this power poker was giving the counterpart a taste of victory. Country's main political prisoner, former presidential candidate Alyksandr Kazulin, was released from jail. Few days later, two more political prisoners were freed, bringing the total number of people spending time in jail for political convictions to zero. Kazulin's release took many by

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surprise, as, being Lukashenka's personal enemy, he seemingly had no chance to be freed until his scheduled release in September 2011 (nicely enough, right after the next presidential elections). Another evidence that there may be a change in Minsk was the slow reaction by Lukashenka to Russia's pleas (or, maybe, orders) of support in its war with Georgia. Lukashenka, who was expected to once again play the role of Kremlin's last friend in the neighborhood, all of a sudden made it clear that the geopolitical loyalty, is a precious commodity that should be rewarded. Some of the Western players, particularly the United States, entered the bidding game promptly.

The cumulative effect of Kazulin release and (temporary) non-recognition of South Ossetia and Abkhazia by Minsk was that both Europeans and Americans abstained from criticizing the election conduct even when it became clear that the authorities would not change two fundamental election practices most vulnerable to fraud: the early vote and the vote count, both placed beyond reach of independent observers. Apparently, the reason for continuous praise for the official Minsk was good intention: never-ending accommodating overtones meant to encourage Lukashenka to liberalize even more.

That was exactly the moment when the Belarusian leader took the initiative: the official media presented early Western praise to the local audience as an overall stamp of approval of the elections, and warned, that, if anything, the subsequent criticism of the elections would be nothing more than double standards. The Western players, in particular the ODIHR observers' mission, was trapped: pointing to the galore of drawbacks in the election conduct drowned in the sea of praise, and, moreover, it exacerbated the authorities, which openly threatened to 'end' the dialogue (and, effectively, restart political attacks) had the criticism of elections intensified. At the same time, the arriving election observers were cordially received by the authorities, some apparently being disarmed by the personal charm of the President. Having invested in the dialogue so much, the West reached the point when ending dialogue was more expensive (in terms of the political image, at the very least) than continuing with failing strategy (a position similar to a poker player when the only hope to return the lost fortune is to sit at the table and try to win back).

To make things worst, there was more than one game and one strategy being played. The EU failed to work out, and stand by, a set of clear criteria for measuring progress in elections. Such criteria, for example, could be access of independent observers to vote count; suspension of early voting or changing procedures for this procedure; and granting opposition representation at the precinct-level election commissions. Instead, at least part of the European players attempted to pass up process for outcome and apparently sought ways of 'fixing' the election outcomes so that the opposition would be guaranteed a minimal but acceptable representation. This not only leveled the moral ground between Lukashenka and his counterparts but also caused an enormous confusion in the ranks of the democratic opposition in Belarus.

The post-election remarks by key EU players created an impression that the threat to 'end the dialogue' still worked. The initial judgment by the OSCE observers mission was that, in spite of some improvements, the vote. "ultimately fell short of OSCE commitments for democratic elections." Nevertheless, a 'half-empty' glass was promptly turned into 'half-full' by the EU commissioner Benita Ferrero - Waldner, who declared on 30 September 2008 that ODIHR mission 'contain positive indicators with [some](#) negative elements.' In even more controversial statement, OSCE chairman, Finish foreign minister Alexander Stubb, declared in a meeting with Lukashenka on 6 October 2008 that ["Belarus is moving in the right direction."](#) These accommodative remarks, which looked from outside as a face saving exercise, were once again used by Lukashenka's propaganda. Immediately after meeting Strubb, he talked to the KGB leadership and triumphantly referred to the post-election praise as the evidence of double dealing and cynicism by the West, a proof that it was least interested in election as such (implying that what the West really needed was a geopolitical ally, not a well-mannered democrat, for partnership). Hence, a failure to take seriously, respect, and stick to its own benchmark as a measure of the progress and a criterion for normalization of relations, deprived the EU of credibility and a moral ground in dealings with the official Minsk. Any further attempt to impose conditionality on Belarusian authorities will most certainly encounter the credibility problem.

The Belarusian opposition's concerns that the dialogue between the EU and the Belarusian government would result in the cessation of support for democratic forces is not entirely ungrounded given the precedent of 2002, when assistance to civil society was curtailed in order to give a chance to the step-by-step strategy pursued by the Union. Regardless of how nicely the talks with the Lukashenka's government proceed, the EU should have learned by now the art of the double-track policy of simultaneous engagement and pressure. Nevertheless, the opposition's feeling of being excluded from the dialogue is not entirely unjustified. Yet, this tendency had been a result of the long-lasting failure of the opposition to affect the political balance in the country, and the irritation by some Western players that the excessive activities of the Belarusian opposition on the Western front have not been matched by at least equally strong effort at home. Overall, when the Belarusian democrats cannot enforce changes on their own right, regardless of the reason, they have to be prepared that the West would talk to Lukashenka on less than principled terms.

Overall, however, the dialogue with the Belarusian authorities was not absolute failure: it did scored a certain success in easing the political climate in the country, although these gains were not in any way institutionalized, and hence are easily reversible. Since dialogue with the Belarusian authorities is set to go on, its major goal now should be solidifying the gains achieved in the past several months. Yet, the utmost failure to achieve a significant progress in opening of the political arena could not be overshadowed even by the face saving remarks of the EU and OSCE officials. To some extent, this result signals the extent to which the regime can engage with the West: the possible areas of engagement are limited by the economic cooperation (which was promptly signaled by Minsk after the election, through liberal tax reform, unveiling of privatization program, and promises to ease climate for foreign investors), and perhaps some progress in the human rights issues. Nevertheless, political liberalization remains strictly off-limits.

This intention not to share power with anyone is not likely to be changed with talk, reasoning, or concessions. There are two ways of dealing with this reality. First is to take political issues out of the context of the dialogue altogether. Second is to combine strategic patience with the moral clarity. The six months grace period given by the EU to the Belarusian authorities on 13 October 2008, when most visa bans were suspended, is also the grace period given by the EU to itself to fit the September embarrassment into a reasonable, consistent, and proactive longer-term strategy. This may happen if by the end of this period the EU would come up with a road map, consisting of the progression of clear and non-negotiable benchmarks for a further engagement and for sustaining the recently approved measures such as unfreezing of official contacts and suspending visa bans. Most importantly, the benchmarks should measure the progress not against political declarations and goodwill gestures, but the changes in the institutional and legal framework that would allow to institutionalize a greater respect for human rights, independent civic activities, greater access to independent information, etc.

EU'S "12 POINTS" – WHAT HAD BEEN DONE

1. Respect the right of the people of Belarus to elect their leaders democratically – their right to hear all views and see all election candidates; the right of opposition candidates and supporters to campaign without harassment, prosecution or imprisonment; independent observation of the elections, including by Belarusian nongovernmental organizations; their freedom to express their will and have their vote fairly counted.

The parliamentary elections that took place on 30 September 2008 were set by the European Union (and, for this reason, the United States) as a benchmark for normalizing relations with the official Minsk and a pre-condition for a further dialogue. BISS offers an extensive analysis of the elections results and their aftermath for the Belarus-EU relations in two policy blitzes. Overall, the test was failed: according to the OSCE observers' mission preliminary judgment, the elections, in spite of improvements, "ultimately fell short of OSCE commitments for democratic elections," OSCE observers said in a statement issued on 29 September 2008. "The election took place in a strictly controlled environment with a barely visible campaign," said the observers, who represented the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly. No opposition candidate was elected, and all 110 places in the House of Representatives, all pro-government, were elected in the first round. The election was marred by the harassment of leading opposition candidates and virtual absence of coverage of the elections in the most important state media. Nevertheless, the authorities managed to create an impression of improvement in the election practices in some minor areas that would not impaired their ability to fully control the vote. For example, the opposition representatives were admitted to the constituency-level electoral commissions and not the precinct commissions that actually counted the vote; opposition candidates were offered to speak on the state TV channel with the lowest permanent audience, etc. The authorities failed to change the routine for the ahead of time voting, considered to be particularly vulnerable to potential fraud; and largely failed to grant the election observers an opportunity to monitor the vote count. Nevertheless, the European Council decided, on 13 October 2008, to lift the visa sanctions against top government officials except for those suspected of participating in the kidnapping of leading opposition personalities in 1999.

2. Respect the right of the people of Belarus to independent information, and to express themselves freely e.g. by allowing journalists to work without harassment or prosecution, not shutting down newspapers or preventing their distribution.

According to independent monitors, official media largely ignored the parliamentary election campaign, as election coverage was largely restricted to reports about country's achievements in the past four years, not candidates' platforms and views. Opposition candidates received the right to speak in official media, but mostly in the outlets that enjoy minimal readership or coverage.

Some candidates were denied opportunity to present their programs on technical grounds. According to monitors, the authorities artificially restricted and controlled political competition.

The president signed in law the new media bill adopted by the parliament in June 2008. The bill was sharply criticized for imposing new restrictions on the independent press; in particular, the prohibition of reporting for foreign media outlets without proper accreditation in Belarus, a move believed to be directed against the EU sponsored media outlets, such as European Radio for Belarus and Belsat.

On 17 July, the college board of Minsk city court turned down the complaint of Maryna Koktysh, a correspondent for the newspaper Narodnaya Volia, against her non-accreditation at the Chamber of Representatives of the National Assembly.

On 24 July, the officers of Minsk department on struggle against organized crime searched in Vitsebsk the apartment of the director of the printing house Vitebskiy Kurier Zhana Papova within the frames of investigation of the criminal case brought on the 4 July blast.

On 28 August, a judge of Leninski district court of Minsk Mikhail Khoma sentenced to 10 days in jail an activist of the civil campaign European Belarus Pavel Luksha, who had been detained for distribution of the newspaper Vybory on 18 August. The newspaper contained articles with calls to boycott the upcoming parliamentary elections and participate in the actions of protest against the falsifications.

On 12 September, journalist Andzhei Pisalnik received a writ to Kastrychnitski district court of Hrodna for 18 September. A statement of the head of Hrodna oblast KGB department was attached to the summons. The court asks to establish the fact that an issue of the newspaper Glos znad Niemna na Uchodzstwie, published by the Union of the Poles in Belarus, had extremist content.

3. Respect the rights of non-governmental organizations as a vital part of a healthy democracy – by no longer hindering their legal existence, harassing and prosecuting members of NGOs, and allowing them to receive international assistance.

Belarusian authorities abstained from enacting article 193-1 of the criminal code prosecuting unauthorized civil society activities. Nevertheless, the legal ground for repression remained fully in place, and the authorities continued to deny registration to the independent-minded civil society groups, political parties, etc.

On 1 July, members of the liquidated cultural-educational NGO Stary Horad Yauhen Belasin, Iryna Laurouskaya, Palina Panasiuk and Siarhei Panasevich directed complaints to the UN Committee on Human Rights against the liquidation of the NGO for wire-drawn regions.

On 15 July, members of the organizing committee of the human rights and educational NGO Movement For Freedom addressed the Supreme Court with a complaint against the decision of the Ministry of Justice not to register the association. It is already the third refusal of the ministry this year.

On 16 July, members of the organizing committee of the Belarusian Christian Democracy Party also submitted to the Supreme Court a complaint against the second refusal of the Justice of Ministry of Justice to register the party.

On 17 July, the Ministry of Justice of Belarus again refused to register the social-ecological NGO Center for support of Chernobyl initiatives whose aim is to give aid to victims of Chernobyl accident and other anthropogenic catastrophes which caused radioactive irradiation.

On 30 July, the Supreme Court turned down the complaint of the founders of the association of pensioners against the refusal of the Ministry of Justice to register the organization. The formal reason for non-registration was that the ministry allegedly found some incorrigible mistakes in the documents that were filed for registration. Uladzimir Strakh, one of the founders of the organization, said that all these mistakes could be corrected, but the Ministry of Justice did not give such opportunity to the pensioners.

4. Release all political prisoners – members of democratic opposition parties, members of NGOs and ordinary citizens arrested at peaceful demonstrations or meetings.

Opposition leader and former presidential candidate Alyaksandr Kazulin was freed from jail on 13 August 2008. Two days later Andrei Kim and Syarhey Parsiukevich, sentenced, accordingly, to 1,5 and 2,5 years in jail in April 2008 for participation in entrepreneurs' protests in January 2008,

were also released, that brought the nominal number of political prisoners to zero. . The possibility of Kazulin's release first emerged in February-March of this year, when Minsk released several prominent political prisoners. However, any moves towards liberalisation ground to a halt after the United States imposed sanctions on leading petrochemical conglomerate Belneftekhim.

The prisoners' release last month marked a significant shift in Belarus's foreign policy strategy, necessitated, among other factors, by the intensification of the Russia's pressure on Lukashenka following his failure to promptly support Kremlin in its war with Georgia. Engagement with the West was treated by President Alyaksandr Lukashenka primarily as image-improving exercise to enable financial and other dealing with the West in the event if alternative to subsidies from Moscow will be necessary. The image aspect is also reflected in Lukashenka's decision to hire British 'spin doctor' Lord Timothy Bell as his public relations advisor. Still, the release of Kazulin, Kim and Parsiukevich has to be considered, in the context of the parliamentary elections, as a luring tactics towards engagement: being offered a clear and identifiable evidence of political progress, the European and US officials were encouraged to offer Lukashenka an olive branch in hope that further engagement would ensure even greater progress, particularly in the election arena. As a result, the West toned down criticism of the election conduct, which was presented by the official media to the domestic audience as an evidence of the endorsement of the elections by the West. Subsequent post-election criticism was referred to as application of double standards.

5. Properly and independently investigate or review the cases of disappeared persons.

There were no developments with regards to the cases of disappeared persons.

6. Ensure the right of the people of Belarus to an independent and impartial judicial system – with judges who are not subject to political pressure, and without arbitrary and unfounded criminal prosecution or politically-motivated judgments such as locking-up citizens who peacefully express their views

And

7. End arbitrary arrest and detention, and ill-treatment.

Over a period concerned, two factors shaped the developments. First, there was first a bomb explosion injuring 54 attendants of a concert to commemorate the official Independence Day (3-4 July 2008). The authorities used this occasion to pressurize the activists of the opposition and non-governmental organizations. A large number of activists were called to visit militia headquarters for 'questioning' about the event (although they had not been there and/or live outside Minsk) and taking their fingerprints and DNA samples. The apartments of several activists were searched. Finally, there were arrests and detainment for a period of ten days, including, for instance, four members of the unregistered 'Bely Legion' (The White Legion) organization. The apartments of some of them were searched. Overall, fourteen opposition members were put in jail for 10 days as suspects, and, according to their stories, as many as dozens of persons who had no relations to politics were briefly locked up. Nevertheless, the suspects claimed upon release that they were treated politely with no harassment or discrimination, and that the authorities respected all procedural formalities. The investigation of the July 4 explosions effectively led to nowhere and the 'Catch-22' approach by the authorities reflected incompetence of the security apparatus rather than repressiveness of the regime: for example, at one moment, among the detainees were the importers of the Ukrainian juices whose cartons were used to plant a bomb.

Second, pressure was determined by the arrival of the parliamentary elections (held on September 28). Over a period concerned, five activists were arrested on that ground to spend 10 days in prison. Some were required to pay heavy fines. An activist was penalized for protesting against the installation of the pesticides factory in a settlement of the Minsk oblast. In Kalinkavichy, an officially registered elections observer was summoned before the Prosecutor's Office and accused of the collection signature for an MP candidate illegally, while the latter was promoted by his political party. In Hrodna region, the activists crossing the Belarusian-Polish border were often examined by the customs that took away printed materials and newspapers. Nevertheless, the pre-election harassment of opposition activist was conducted far less intensely considering previous election campaign, particularly the 2006 presidential and 2004 parliamentary elections. The courts granted a minimal number of appeals to candidates disqualified by the central election commissions and upheld the decisions by administrations to fire opposition activists who ran as candidates for elections, such as Andrei Mekh in Kobryn.

The ordeal of Emmanuil Zeltser, an US lawyer trapped and captured in Minsk in February 2008 and subsequently sentenced to three years in jail for commercial espionage, continued in the third quarter of 2008. Zeltser, according to certain versions, was framed by his long-time client, Russian tycoon Boris Berezovski, presumably because he tried to sort out the assets left behind by the late

Georgian businessman Badri Patarkatsishvili, Berezovski's former partner-turned-nemesis. According to the multiple claims by the Zeltser's family, he was denied treatment and necessary medicine while in jail. The authorities apparently improved treatment of Zeltser after intervention of the US embassy.

8. Respect the rights of the people of Belarus as workers – their right to join a trade union and the right of trade unions to work to defend the people's rights.

The cases of discrimination of independent trade unions (i.e. unaffiliated with the FTUB) continued to be observed over a period of concern. For instance, in Brest, employer ('Riona' enterprise) demanded workers to leave the Radio Electronics Workers' Union in order to get their wages paid on time. This step was a reaction to the request to include a representative of the REP union in a qualification commission to certify the harshness of labor conditions at the company. Most importantly, no improvements are made concerning the most sensitive issue for independent trade unions, namely the registration of their primary organizations. For instance, in Rechitsa, the local authorities refused to register the primary organization of the REP union, while the union representative claim the decision has not been grounded sufficiently in the legal terms. The union continues its struggles in the court.

9. Respect the rights of the people of Belarus as entrepreneurs to operate without excessive intervention by the authorities.

A period observed is marked by a struggle of entrepreneurs and their organizations against the adoption of a regulation of the Ministry of Economy No. 179 issued on August 27, 2008. In essence, the regulation was intended to limit the mark-up for the imported goods to 30% above the costs of the first importer. If implemented, it could have turned many intermediates and retail companies into loss-makers. After some negotiations between the government and the business associations, the amendments were made, including the increase of the mark-up. Nevertheless, the situation remains uncertain. Entrepreneurs foresee further problems with the adoption of even the amended regulation. Representatives of 'Perespektiva', an organization for small-scale entrepreneurs, plan to protest in December 2008 against the new regulation. At the same time, some positive tendencies could be mentioned. The World Bank noticed a considerable progress in the legal reforms to simplify conditions for doing business. This is due to the simplification of the startup procedures, loan provision, licensing (in the construction sector), and trade. However, business unions mention the need to reduce penalties and punishment for the violations of Administrative Code by entrepreneurs. In September, petty traders of two markets of Rechitsa protested against the confiscation of their goods by the tax authorities that often used minor violations (like inaccuracies in the documentation) to do so. The arrival of the municipal authorities helped to solve the conflict.

10. Respect the rights and freedoms of those Belarusian citizens who belong to national minorities.

No meaningful developments happened in this area in the third quarter of 2008.

11. Join the other nations of Europe in abolishing the death penalty.

Death penalty is still available as a punishment in the Criminal Code, and moratorium on its implementation, in spite of the hints by the officials, has yet to be introduced. There was one death sentence issued in Belarus in 2008. Five executions were conducted in 2008, the latest in late October 2008, of a pedophile sentenced for raping and murdering a child. Given the dramatic decrease of the number of death sentences issued and executed, the chairman of the Supreme Court of Belarus Valery Sukala declared in September 2008 that the moratorium had been de-facto implemented in Belarus, and the public opinion is now morally ready for it.

12. Make use of the support which the OSCE, the EU and other organizations offer to Belarus to help it respect the rights of its people.

Belarusian authorities cooperated with the OSCE election observers' mission that was allowed to operate across the country. Several hundred election observers were invited to monitor the vote. Nevertheless, the authorities openly pressured the mission towards issuing a positive or at least neutral opinion of the elections, threatening to 'end' the dialogue with the EU if the vote would be judged unfair and undemocratic. This harassment partly worked to nudge the EU officials, if not the OSCE mission itself, towards a more accommodative approach and stressing positive trends in the Belarus's political process over ostentatious failure to respect democratic electoral standards.